

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

RED BARN MOTORS, INC., PLATINUM )  
MOTORS, INC., and MATTINGLY AUTO )  
SALES, INC., individually and on behalf of )  
other members of the general public similarly )  
situated, )

Plaintiffs, )

v. )

COX ENTERPRISES, INC., COX )  
AUTOMOTIVE, INC., NEXTGEAR CAPITAL, )  
INC. F/K/A DEALER SERVICES )  
CORPORATION, successor by merger with )  
Manheim Automotive Financial Services, Inc., )  
and JOHN WICK, )

Defendants. )

Case No. 1:14-cv-01589-TWP-DKL

**UNOPPOSED MOTION TO VACATE TRIAL DATE**  
**AND AMEND CASE MANAGEMENT PLAN**

In light of the motions currently pending before the Court, Defendants NextGear Capital, Inc., Cox Enterprises, Inc., Cox Automotive, Inc., and John Wick respectfully request that the Court amend the Case Management Plan [Doc. 144] to vacate and reset the trial date and otherwise amend certain upcoming deadlines in this matter. In support of this motion, Defendants submit as follows:

1. Plaintiffs moved to amend their Complaint on January 8, 2016. In amending their Complaint, Plaintiffs sought to add additional parties, plaintiff and defendant, and to assert new class allegations. The Court granted the motion and the Amended Complaint was filed March 11, 2016 [Doc. 117].

2. Defendants filed a timely motion to dismiss on April 15, 2016 [Doc. 126]. Briefing on the motion to dismiss was completed in June 2016. The motion to dismiss is currently pending before the Court, and Defendants have therefore never answered the Amended Complaint.

3. In accordance with the Case Management Plan entered by the Court, Plaintiffs filed a motion for class certification and appointment of class counsel on September 30, 2016 [Doc. 153]. Briefing on the motion for class certification was completed in December 2016. The motion for class certification is pending before the Court.

4. Non-expert discovery closed on December 20, 2016. The Case Management Plan provides that dispositive motions will be due on January 16, 2017, and that trial will begin on May 8, 2017.

5. Because Defendants' motion to dismiss has not yet been decided, Defendants do not know which, if any, of Plaintiffs' claims were properly pleaded and must be addressed by dispositive motion.

6. Further, given a dispositive motion deadline of January 16, 2017, summary judgment will not be fully briefed until February 27, 2017 at the earliest. Thus, the Court will only have approximately two months before trial to decide whether summary judgment should be granted.

7. Defendants therefore respectfully request that (a) the dispositive motion deadline be postponed, and (b) the trial date of May 8, 2017 be vacated and set for a later time.

8. Specifically, Defendants propose the following amendments to the Case Management Plan:

a. Dispositive motions and/or responsive pleadings shall be due within **30 days** after the motion to dismiss is decided.

b. Trial shall be scheduled for a ten-day period convenient for the Court in **August or September 2017**.

c. Other pre-trial deadlines, including dates for the pre-trial conference, *Daubert* motions, and witness and exhibit lists shall be established accordingly. Defendants propose that the pre-trial conference be held approximately three weeks before the trial date. Defendants further propose that *Daubert* motions be due five weeks before the pre-trial conference and that final witness and exhibit lists be due four weeks before the pre-trial conference.

9. Counsel for Defendants have conferred with counsel for Plaintiffs, and counsel for Plaintiffs do not oppose the request for the continuance provided that the trial can be reset for August or September of 2017 as Defendants have requested.

WHEREFORE, Defendants respectfully request that the Court enter the attached Proposed Order, vacate the currently-scheduled trial date, and establish a new schedule for dispositive motions and pre-trial practice.

Respectfully submitted, this 30th day of December, 2016.

s/ Tracey K. Ledbetter

David J. Jurkiewicz (18018-53)  
Paul D. Vink (23785-32)  
BOSE McKINNEY & EVANS LLP  
111 Monument Circle, Suite 2700  
Indianapolis, IN 46204  
(317) 684-5000  
(317) 684-5173 fax  
[djurkiewicz@boselaw.com](mailto:djurkiewicz@boselaw.com)  
[pvink@boselaw.com](mailto:pvink@boselaw.com)

Jason S. McCarter (*pro hac vice*)  
Tracey K. Ledbetter (*pro hac vice*)  
SUTHERLAND ASBILL & BRENNAN LLP  
999 Peachtree Street, NE, Suite 2300  
Atlanta, GA 30309-3996  
(404) 853-8000  
(404) 853-8806 fax  
[jason.mccarter@sutherland.com](mailto:jason.mccarter@sutherland.com)  
[tracey.ledbetter@sutherland.com](mailto:tracey.ledbetter@sutherland.com)

*Attorneys for Defendants Cox Enterprises, Inc., Cox  
Automotive, Inc., NextGear Capital, Inc. f/k/a  
Dealer Services Corporation, and John Wick*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been served upon the following counsel of record via the Court's electronic service notification system, this 30th day of December, 2016:

Ryan D. Adams  
James M. Garner  
Matthew M. Coman  
Jacob A. Airey  
SHER GARNER CAHILL RICHTER  
KLEIN & HILBERT, L.L.C.  
[radams@shergarner.com](mailto:radams@shergarner.com)  
[jgarner@shergarner.com](mailto:jgarner@shergarner.com)  
[mcoman@shergarner.com](mailto:mcoman@shergarner.com)  
[jairey@shergarner.com](mailto:jairey@shergarner.com)  
[ksimcox@shergarner.com](mailto:ksimcox@shergarner.com)  
[akeller@shergarner.com](mailto:akeller@shergarner.com)  
[jstockstill@shergarner.com](mailto:jstockstill@shergarner.com)  
[jchocheles@shergarner.com](mailto:jchocheles@shergarner.com)  
[priggs@shergarner.com](mailto:priggs@shergarner.com)

Gladstone N. Jones, III  
Lynn E. Swanson  
Kerry A. Murphy  
Catherine E. Lasky  
JONES, SWANSON, HUDDALL &  
GARRISON, LLC  
[gjones@jonesswanson.com](mailto:gjones@jonesswanson.com)  
[lswanson@jonesswanson.com](mailto:lswanson@jonesswanson.com)  
[greed@jonesswanson.com](mailto:greed@jonesswanson.com)  
[cmason@jonesswanson.com](mailto:cmason@jonesswanson.com)  
[sjoshua@jonesswanson.com](mailto:sjoshua@jonesswanson.com)  
[kmurphy@jonesswanson.com](mailto:kmurphy@jonesswanson.com)  
[lreeves@jonesswanson.com](mailto:lreeves@jonesswanson.com)  
[klasky@jonesswanson.com](mailto:klasky@jonesswanson.com)

Cassie E. Felder  
LUGENBUHL, WHEATON, PECK,  
RANKIN & HUBBARD  
[cfelder@lawla.com](mailto:cfelder@lawla.com)  
[kfisher@lawla.com](mailto:kfisher@lawla.com)

Kathleen A. DeLaney  
DELANEY & DELANEY LLC  
[Kathleen@delaneylaw.net](mailto:Kathleen@delaneylaw.net)

Lisa Brener  
BRENER LAW FIRM, LLC  
[lbrener@brenerlawfirm.com](mailto:lbrener@brenerlawfirm.com)  
[tkeller@brenerlawfirm.com](mailto:tkeller@brenerlawfirm.com)

s/ Tracey K. Ledbetter  
Tracey K. Ledbetter